

REMARKS

This Amendment is being filed in response to the Office Action mailed on Office Action mailed on April 8, 2008, and the Notice of Abandonment mailed on October 30, 2008. Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-8 remain in this application, where claims 9-19 have been canceled without prejudice. Applicants reserve the right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or continuing applications.

Claim 1 is independent

In the Office Action, claims 9-10 are withdrawn from consideration as allegedly being directed to an invention independent and distinct from claims 1-8. Without agreeing with the position forwarded in the Office Action and in the interest of advancing prosecution, claims 1-8 have been canceled without prejudice.

In the Office Action, claims 1-8 are rejected under 35 U.S.C.

§112, first paragraph as allegedly failing to comply with the written description requirement. Applicants respectfully disagree and submit that the Application fully complies with the written description requirement, and reasonably conveys that the inventors, at the time the Application was filed, had possession of the claimed invention.

For example, page 6, lines 20-27 recite generating the lowering command signal that lowers the basket lift to lower the basket into the cooking medium based on the temperature that is determined "in response to which a food lowering command signal is given from the steepness of the temperature rise over time and the desired time between the signal and the moment when the upper limit value of the sensed temperature would be reached if no food is lowered into the cooking medium." (Page 6, lines 23-27)

It is respectfully submitted that one skilled in the art would have no trouble understanding that the inventors, at the time of the application was filed, had possession of the claimed invention.

Further, claim 1 has been amended for better conformance with the specification and original claim 8. It is respectfully

submitted that the rejection of claims 1-8 has been overcome and an indication as such is respectfully requested.

In the Office Action, claims 1-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over U.S. Patent No. 6,427,580 (Benedictus). The Examiner indicated that a terminal disclaimer may be used to overcome this rejection. This rejection is respectfully traversed, particularly in view of the present amendments to the claims. However, it is respectfully submitted that Applicants will consider filing a terminal disclaimer, if necessary in view of any allowable claims, upon indication that the present application is otherwise allowable or includes allowable claims.

In the Office Action, claims 1-8 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 4,574,185 (Wenger). It is respectfully submitted that claims 1-8 are patentable over Wenger for at least the following reasons.

Wenger is directed to a deep fryer having an oil tank, where an immersed heater 3 is controlled by a thermostat 2 which disconnects the heater 3 when the oil reaches a given temperature.

It is respectfully submitted that Wenger does not teach or suggest the present invention as recited in independent claim 1, amongst other patentable elements, requires (illustrative emphasis provided) :

the control system being further adapted for generating the second food lowering command signal based on steepness of a temperature rise over time of the temperature and a desired time between generation of the food lowering command signal and when the upper limit value of the sensed temperature would be reached.

These features are nowhere disclosed or suggested in Wenger. Rather, Wenger merely discloses to generate a bell or light (see column 1, lines 59-60) "indicating to the user that the operating temperature is going to be reached imminently and that he can immerse the basket." (Column 2, lines 29-30) As recited on column 2, lines 55-56, the light "lights up about 15 seconds before the disconnecting of the heater." (See also column 3, lines 23-27)

In Wenger, it is the user who lowers or immerses the basket into the oil in response to a light or bell. Wenger simple does not disclose or suggest "generating the second food lowering command signal based on steepness of a temperature rise over time

of the temperature and a desired time between generation of the food lowering command signal and when the upper limit value of the sensed temperature would be reached," as recited in independent claim 1.

Accordingly, it is respectfully submitted that independent claim 1 is allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2-8 should also be allowed at least based on their dependence from independent claim 1, as well as for the separately patentable elements contained in each of said claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

For example, Wenger does not teach or suggest the present invention as recited in claim 3, which recites (illustrative emphasis provided):

a user interface operatively connected to the control system for setting a boost condition wherein, in said boost condition, said upper limit value of the sensed temperature and said second predetermined sensed temperature below said upper limit value are temporarily increased.

Instead of a boost condition, Wenger discloses that "the

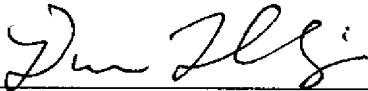
maximum temperature is lowered, which improves the quality of the fried food." (Column 1, lines 56-58) That is, Wenger lowers the maximum temperature instead of increasing it, thus teaching away from the present invention as recited in claim 3.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

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Amendment in Reply to Office Action mailed on April 8, 2008
and the Notice of Abandonment mailed on October 30, 2008

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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Enclosure: Petition to Revive

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